

**REMARKS**

Claims 1-30 are pending in the application.

Claims 1-30 stand rejected.

Claims 1, 6, 7, 9, 13, 14, 16, 20, 21, 23, 28, and 29 have been amended.

Amendments to the Specification have been proposed. The Office Action requested a new title “that is clearly indicative of the invention to which the claims are directed.” Applicants have amended the title to the application as proposed by the Examiner. Applicants submit that this amendment does not constitute the addition of new matter to the application.

Prior to responding to the rejections over the cited references, Applicants note that certain of the claims have been amended simply to improve clarity. In clarifying the claim language, these amendments are not intended to limit the scope of the claims, unless the claim language is explicitly referred to in the following arguments to distinguish over one or more of the cited references.

**Rejection of Claims under 35 U.S.C. § 103(a)**

Claims 1-30 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious by U.S. Patent No. 6,570,875, issued to Hegde (“Hegde”) in view of one or more other references, as discussed below. Applicants respectfully traverse these rejections.

In order for a claim to be rendered invalid under 35 U.S.C. § 103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. § 103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3)

there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998). The burden is on the Examiner to support a case of obviousness, including whether the prior art references teach or suggest all of the claim limitations. *See* MPEP 706.02(j).

**Independent Claims 1, 9, 16, and 23.**

Independent Claims 1, 9, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hegde in view of U.S. Patent No. 5,539,659 issued to McKee (“McKee”). Independent Claim 23 also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Hegde in view of McKee, as well as in view of U. S. Patent No. 6,463,067 issued to Hebb *et al.* (“Hebb”). Applicants respectfully traverse these rejections.

Each of the original independent claims contains a limitation related to “processing the group of information for network data collection if the determination is to process the group of information.” *See, e.g.* Claim 1 (emphasis added). The Office Action cites to Hegde as disclosing this claim limitation. Applicants respectfully submit that neither the cited sections of Hegde, nor the cited sections of the additional references, disclose this claim limitation.

Hegde discloses a network router that analyzes packet source and destination information in order to update router tables.

Incoming data packets are examined and the flow (i.e., source and destination) with which they are associated is determined. A flow table contains forwarding information that can be applied to the flow. If an entry is not present in the table for the particular flow, the packet is forwarded to the CPU to be processed. The CPU can then update the table with new forwarding information to be applied to all future packets of the same flow.

Hegde 2:65-3:6; *see also*, Hegde 10:36-44 (updating the flow table if the source of flow is unresolved); Hegde 11:65-12:5 (updating the flow table if the destination address is unresolved).

Hegde's router flow table updating is not network data collection as claimed in the pending claims. Merely updating router tables is not network data collection as claimed. However, to clarify the distinction between the claimed invention and the cited sections of Hegde, Applicants have amended the phrase "network data collection" in the independent claims (and all corresponding phrases in the dependent claims) to read "network traffic data collection." This amendment adds no new matter to the Application, and is supported by at least pages 12-16 of the Application.

Further, the pending claims themselves distinguish between processing a group of information for network traffic data collection and processing to determine routing flow. *See, e.g.*, Claim 4 ("sending the group of information to one or more processing engines to determine routing to the destination and forwarding the group of information according to the determined routing" if a destination is not already in the forwarding table). Applicants have found no disclosure within Hegde of network traffic data collection as claimed, nor does the Office Action suggest that the additionally cited references (McKee; claims 1-9, 16; McKee and Hebb: Claim 23) provide any support for this claim limitation.

Further, all of the referenced claims contain a limitation related to "determining whether to process the group of information for network traffic data collection according to a sample algorithm." *See, e.g.*, Claim 1 (as amended). The Office Action admits that Hegde "does not explicitly disclose collection according to a sample algorithm." Office Action, pp. 3, 11. The Office Action then relies upon McKee to supply disclosure for network data collection according to a sample algorithm. *id.* Applicants respectfully submit that McKee does not fill in the gaps left by the Hegde disclosure. Further, a person of ordinary skill in the art would not have been

motivated to combine Hegde with McKee nor would they reasonably expect success resulting from such a combination.

The cited sections of McKee do not disclose a sample algorithm as claimed in the above-referenced claims. McKee Figure 6, as cited, discloses only a step related to “Form Network Traffic Matrix,” but neither the figure nor the cited-to explanation in McKee’s specification provide a sample algorithm as claimed.

More to the point, there is no teaching, suggestion or motivation to combine the references either in Hegde or McKee or in the knowledge of the art. Hegde discloses a router that is designed to update its routing tables upon a determination that a source or destination of a packet is not present in a flow table. In order to do this, Hegde must monitor every packet of information coming through the disclosed ports. *See* Hegde 5:38-43 ([S]witch module 60 continually monitors each of the ports for incoming traffic when a data packet arrives, it checks the packet header for information that identifies the flow to which the packet belongs.”)(emphasis added); 8:18-23 (“The switch then enters into an operational state wherein switch engine 100 continually monitors for data packets arriving on each of ports 50 via port interfaces 120-1...120-N (step S6). When a packet is received (step S8), it is processed in accordance with the algorithm further illustrated in Figure 7 (step S10).”)(emphasis added). In order to function properly, Hegde must monitor every packet in order to determine whether or not a flow table entry must be added. The disclosure makes clear that the Hegde router cannot operate in a mode where not every packet is analyzed. Hegde processes a packet not based upon a sampling algorithm, but on whether a source/destination address combination is found in the flow table. If Hegde did not analyze at least the source and destination of each received packet, the Hegde router could not effectively update its flow tables. Thus, a person of ordinary skill in

the art would not be motivated to combine the continuously monitoring Hegde router as disclosed with McKee's random sampling.

Further, because Hegde requires continuous monitoring of each incoming packet as discussed above, a person of ordinary skill in the art would not expect success to be achieved by combining Hegde with McKee's random sampling. As stated above, if Hegde did not analyze at least the source and destination of each received packet, then the Hegde router could not effectively update its flow tables. Therefore, a person of ordinary skill in the art would not expect McKee's random sample of packets to provide the information that a Hegde router requires to succeed.

For at least the above reasons, Applicants respectfully submit that the stated combination of Hegde with McKee (Claims 1, 9, 16) and Hegde with McKee and Hebb (Claim 23) do not present a *prima facie* case of obviousness for the independent claims, and all claims dependent upon them, and that therefore all these claims are in condition for allowance. Applicants therefore request the Examiner's reconsideration of the rejections to those claims.

**Dependent Claims 3, 11, 18, and 25.**

Dependent Claims 3, 11, 18, and 25 have been rejected as obvious over Hegde in view of McKee. The Office Action states that McKee "discloses wherein the sample algorithm is selected from one of linear, exponential, natural log, burst and traffic attribute." Applicants respectfully submit that McKee contains no disclosure of the listed sample algorithms.

As discussed above, the cited sections of McKee refer at best to randomly sampling packets by the disclosed monitoring device. The Office Action makes no reference to any section of McKee that discloses the sample algorithm as one of a linear, exponential, natural

log, burst, and traffic attribute. Nor does the Office Action refer to any other reference to provide such disclosure. Without such disclosure, the Applicants respectfully submit that the pertinence of the McKee reference has not been clearly explained as to these claims, as required by 37 C.F.R. § 1.104(c)(2). Nevertheless, Applicants have reviewed the McKee reference and have found no disclosure of the claimed sample algorithms in the above claims.

For these reasons, and the reasons explained above with regard to the related independent claims, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for Claims 3, 11, 18, and 25, and any claims dependent thereon, and that they are therefore in condition for allowance. Applicants therefore request the Examiner's reconsideration of the rejections to those claims.

**Dietz and Takase References.**

The Office Action rejects Claims 6, 13, and 20 as obvious over Hegde in view of McKee and Dietz (U.S. Patent No. 6,651,099), and Claim 28 as obvious over Hegde in view of McKee, Hebb, and Dietz. Dietz is presented in the Office Action as a reference to provide disclosure of "incrementing a field in an existing entry in the table if the group of information is part of the one or more recorded traffic flows," and "time stamping the group of information."

The Office Action additionally rejects Claims 7, 8, 14, 15, 21, and 22 as obvious over Hegde in view of McKee, Dietz, and Takase (U.S. Patent No. 5,822,535), and Claims 29 and 30 as obvious over Hegde in view of McKee, Hebb, Dietz, and Takase. Takase is presented in the Office Action as a reference to provide disclosure of "creating a traffic information packet," "transmitting the traffic information packet to a network data collection application," and the content of the traffic information packet.

As stated above for the independent claims upon which all of the claims listed in this section depend, the principal references of Hegde and McKee cannot be combined to render the independent claims obvious. The additional references listed in this section do not provide any additional support for combining Hegde and McKee, and therefore do not overcome the argument above. If the principal references cannot be combined to render the independent claims obvious, then the addition of the references cited herein cannot be used to render these dependent claims obvious.

In addition, Applicants also respectfully submit that the Examiner has not satisfied the burden of factually supporting the alleged motivation to combine all of the references. The Examiner's duty may not be satisfied by engaging impermissible hindsight; any conclusion of obviousness must be reached on the basis of facts gleaned from the references. The Examiner must therefore provide evidence to suggest the combination and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *See In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Applicants respectfully submit that the particular parts of the cited references relied upon by the Examiner and the pertinence of each reference has not been clearly explained, especially with regard to the motivation to combine references. Further, the Office action does not establish that such a combination of the teachings of these references would meet with success, as required.

For at least these reasons, and the reasons expressed above with regard to the related independent claims, Applicants respectfully submit that the Office Action fails to present a *prima facie* case of obviousness for dependent Claims 6-8, 13-15, 20-23, 28-30, and that they are therefore in condition for allowance. Applicants therefore request the Examiner's reconsideration of the rejections to those claims.

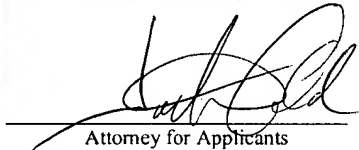
For at least the reasons set forth above, Applicants respectfully submit that the pending claims are in condition for allowance and request the Examiner's reconsideration of the rejections to those claims.



CONCLUSION

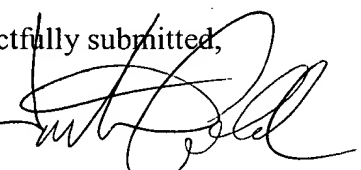
In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5090.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 31, 2004.

  
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8/31/2004  
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Date of Signature

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